

THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:13-cv-00071-MR-DLH

JOE HAND PROMOTIONS, INC.,)

Plaintiff,)

vs.)

ORDER

JENNIFER DEFAZIO, individually and)
as an officer, director, shareholder,)
and/or principal of OWL'S NEST)
SPORTS LOUNGE, LLC d//b/a OWL'S)
NEST SPORTS LOUNGE, EDWARD)
SIEMAK, individually and as an)
officer, director, shareholder and/or)
principal of Owl's Nest Sports)
Lounge, LLC, d/b/a Owl's Nest)
Sports Lounge, ANTHONY DEFAZIO,)
individually and as an officer,)
director, shareholder and/or principal)
of Owl's Nest Sports Lounge, LLC,)
d/b/a Owl's Nest Sports Lounge,)
CHARLES S. MOREHEAD,)
individually and as an officer,)
director, shareholder and/or principal)
of Owl's Nest Sports Lounge, LLC,)
d/b/a Owl's Nest Sports Lounge, and)
OWL'S NEST SPORTS LOUNGE,)
LLC, a North Carolina Limited)
Liability Company d/b/a Owl's Nest)
Sports Lounge,)

Defendants.)

THIS MATTER is before the Court on the Plaintiff's Response to Show Cause Order [Doc. 11].

On June 19, 2013, the Court entered an Order directing the Plaintiff to show cause why this case should not be dismissed for failure to prosecute as to Defendants Jennifer DeFazio, Anthony DeFazio, Charles S. Morehead, and Owl's Nest Sports Lounge, LLC d/b/a Owl's Nest Sports Lounge. [Doc. 10]. The Plaintiff was further ordered to advise whether it intended to pursue service of Defendant Edward Siemak. [Id.].

On June 27, 2013, the Plaintiff filed a Response to the Show Cause Order, stating that it intends to file a motion for default judgment against all Defendants except Defendant Siemak, as the Plaintiff has decided to terminate its efforts to serve him. [Doc. 11]. Attached to the Plaintiff's Response, however, is a document that Plaintiff's counsel received entitled "Response to Summons in a Civil Action." [Doc. 11-1]. This "Response," which was not filed in this Court, appears to answer the allegations of the Complaint on behalf of Defendants Jennifer DeFazio, Anthony DeFazio, and Owl's Nest Sports Lounge, LLC. The Response is signed only by a Carmen DeFazio, a non-party. It is unclear whether Ms. DeFazio is a licensed attorney.

Upon review of the Plaintiff's Response to the Show Cause Order, the Show Cause Order is hereby discharged. The Court will allow the Plaintiff fourteen (14) days to file a notice of dismissal as to Defendant Siemak and to file a motion for default judgment against Defendant Charles S. Morehead.

The Court will direct the Clerk to file the "Response," which is attached to the Plaintiff's Response to Show Cause Order as Document 11-1, as an Answer on behalf of Defendants Jennifer DeFazio, Anthony DeFazio, and Owl's Nest Sports Lounge, LLC. These Defendants are advised, however, that this Answer is deficient in several respects. First, it is unclear whether Carmen DeFazio, who signed the pleading, is a licensed attorney. If Ms. DeFazio is not a licensed attorney, she may not represent any of the Defendants in this action and may not submit pleadings on their behalf. If the Defendants are in fact proceeding *pro se* (that is, without the assistance of a licensed attorney), the individual Defendants, Jennifer DeFazio and Anthony DeFazio, must sign any pleadings in their capacity as *pro se* litigants. See Fed. R. Civ. P. 11(a).

As a limited liability company, however, Defendant Owl's Nest Sports Lounge, LLC may appear in this Court only through a licensed attorney. A limited liability company may not proceed *pro se* or be represented by a

non-attorney. Thus, if Owl's Nest Sports Lounge, LLC is in fact unrepresented, it must obtain counsel in order to proceed in this action. The Defendant Owl's Nest Sports Lounge, LLC is therefore advised that failure to obtain counsel and to have such counsel file an amended answer on its behalf within thirty (30) days of the entry of this Order will result in the striking of the Defendant's Answer and the entry of default against it.

IT IS, THEREFORE, ORDERED that the Show Cause Order [Doc. 10] is hereby **DISCHARGED**.

IT IS FURTHER ORDERED that the Plaintiff shall file a notice of dismissal as to Defendant Siemak within fourteen (14) days of the entry of this Order.

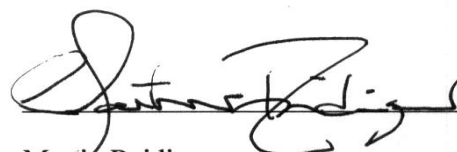
IT IS FURTHER ORDERED that the Plaintiff shall file a motion for default judgment against Defendant Charles S. Morehead within fourteen (14) days of the entry of this Order.

IT IS FURTHER ORDERED that the Clerk of Court shall file the "Response to Summons in a Civil Action," which is attached to the Plaintiff's Response to Show Cause Order as Document 11-1, as an Answer on behalf of Defendants Jennifer DeFazio, Anthony DeFazio, and Owl's Nest Sports Lounge, LLC.

IT IS FURTHER ORDERED that Defendants Jennifer DeFazio, Anthony DeFazio, and Owl's Nest Sports Lounge, LLC shall advise the Court within thirty days as to whether Carmen DeFazio is a licensed attorney who intends to represent them in this action. In the event that Carmen DeFazio is not a licensed attorney, then Defendants Jennifer DeFazio and Anthony DeFazio shall have thirty (30) days from the entry of this Order to file an amended answer that is signed by both parties in their *pro se* capacities, and Defendant Owl's Nest Sports Lounge, LLC, shall have thirty (30) days from the entry of this Order to obtain counsel and have an amended answer filed on its behalf. **The Defendants Jennifer DeFazio, Anthony DeFazio, and Owl's Nest Sports Lounge, LLC are hereby placed on notice that failure to correct the identified deficiencies may result in their Answer be stricken and the entry of default against them.**

IT IS SO ORDERED.

Signed: July 1, 2013


Martin Reidinger
United States District Judge

